
**APPEALS BOARD
UTAH LABOR COMMISSION**

**UTAH OCCUPATIONAL SAFETY
AND HEALTH DIVISION,**

Petitioner,

vs.

CMICI,

Respondent.

**ORDER REVERSING
ALJ'S DECISION**

Case No. 5304412513

CMICI asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge George's order upholding citations issued by the Utah Occupational Safety & Health Division ("UOSH") against CMICI for alleged violations of workplace safety regulations established pursuant to the Utah Occupational Safety and Health Act, Utah Code Annotated Title 34A, Chapter 6.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-6-304.

BACKGROUND AND ISSUES PRESENTED

UOSH cited CMICI for alleged violation of requirements imposed on employers pursuant to the Utah Occupational Safety and Health Act and associated regulations. In summary, those regulations require employers to identify workplace safety hazards and protect employees from those hazards. CMICI contested the UOSH citations on the grounds CMICI was not responsible for the alleged workplace hazards and did not have any employees who were exposed to those hazards.

Administrative Law Judge George conducted an evidentiary hearing in this matter and then issued a decision upholding the citations against CMICI. Also as part of his decision, Judge George concluded that another entity, Mold Inspector Laboratories, also was liable under the citations.

In requesting Appeals Board review of Judge George's decision, CMICI challenges the accuracy and sufficiency of Judge George's findings of fact and argues that Judge George lacked jurisdiction to impose any liability on MIL. CMICI also reiterates its arguments that it was not responsible for the alleged hazards and had no employees exposed to those hazards.

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DISCUSSION

The Appeals Board first addresses Judge George's jurisdiction over MIL. Judge George concluded that various business and personal relationships between CMICI and MIL justified holding MIL responsible for the alleged safety hazards that are the subject of this proceeding. The Appeals Board notes that Judge George's decision does not discuss the factual or legal requirements for imposing such liability on MIL. But the more basic defect with Judge George's order against MIL is that the company was never made a party to these proceedings.

Fundamental concepts of due process, as well as the statutory requirements of Utah's Administrative Procedures Act, require that MIL be provided adequate notice of the claims against it and an opportunity to defend against those claims. However, MIL was never cited for safety violations by UOSH and was not joined as a defendant in this proceeding. Under these circumstances, the Appeals Board concludes that Judge George had no jurisdiction to impose any liability on MIL.

With respect to the citations issued against CMICI, it is UOSH's burden to prove each of the essential elements of those citations. The evidence presented at hearing was incomplete and confusing. Perhaps as a result of these evidentiary deficiencies, Judge George's decision fails to adequately identify any workplace hazards or to discuss how CMICI violated the safety standards in question. Furthermore, the decision's conclusion that CMICI had employees at the worksite is speculative and unsupported by meaningful analysis. In light of these deficiencies, the Appeals Board concludes that Judge George erred in upholding UOSH's citations against CMICI.

ORDER

The Appeals Board reverses Judge George's decision in this matter. It is so ordered.

Dated this 30th day of September, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

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NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.